Commonwealth of Massachusetts
State Ethics Commission

One Ashburton Place, Room 619, Boston, MA, 02108
phone: 617-727-0060, fax: 617-723-5851

SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 461

IN THE MATTER
OF
CHARLES J. MANCA

DISPOSITION AGREEMENT

This Disposition Agreement (Agreement) is entered into between the State Ethics Commission (Commission) and Mayor Charles J. Manca (Mayor Manca) pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 14, 1992, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Mayor Manca. The Commission has concluded its inquiry and, on December 10, 1992, found reasonable cause to believe that Mayor Manca violated G.L. c. 268A.

The Commission and Mayor Manca now agree to the following findings of fact and conclusions of law:

1. Mayor Manca was, during the time relevant, the Mayor of the City of Gardner. As such, Mayor Manca was a municipal employee as that term is defined in G.L. c. 268A, §1.

2. As mayor, Mayor Manca is required by law to sign all contracts of $5,000 or more. G.L. c. 43, §29.

3. Manca Brothers, Inc. is a Massachusetts corporation engaged in the business of trash removal and recycling. It is owned by Mayor Manca's brother, John F. Manca.

4. In or about August, 1991, the City of Gardner Board of Health issued a request for proposals for a container recycling contract (the Contract). Manca Brothers and one other vendor submitted bids. On August 28, 1991, the City's purchasing agent opened the bids and certified Manca Brothers as being the lowest qualified bidder. The value of the contract was approximately $6,000.[1/]

5. Once the Contract was awarded, it went through the customary city review and approval process. It was first signed by John F. Manca as president of Manca Brothers. It was then signed by the city auditor and purchasing agent. Finally, on September 17, 1991, Mayor Manca signed the Contract.[2/]

6. By affidavit dated October 30, 1992, Mayor Manca stated that he did not realize at the time he signed the Contract that it involved his brother's company. He also stated that he does not routinely look at the vendor's name or the vendor's signature on small contracts, since he feels assured by seeing the purchasing agent's signature that the vendor was the low bidder.

7. Section 23(b)(3) prohibits a municipal employee from knowingly, or with reason to know, acting in a manner which would cause a reasonable person knowing all of the facts to conclude that anyone can improperly influence or unduly enjoy his favor in the performance of his official duties, or that he is likely to act or fail to act as a result of kinship, rank, position or undue influence of any party or person.[3/]

8. By signing the Contract where it involved his brother's company, Mayor Manca created an appearance of impropriety, namely an appearance that his signing the contract may have been based in part on the fact that

his brother had a financial interest in the contract. Therefore, Mayor Manca's signing the Contract under these circumstances would cause a reasonable person knowing all of the relevant facts to conclude that Mayor Manca's brother can unduly enjoy his favor in the performance of his official duties.[4/] Consequently, Mayor Manca violated §23(b)(3).[5/]

9. In his defense, Mayor Manca states that when he signed the contract, he was not aware that it involved his brother's company. Lack of knowledge, however, is not a defense to a §23(b)(3) violation. Section 23(b)(3) has a "knowingly or with reason to know" standard.[6/] In the Commission's view, Mayor Manca should have known what he was signing and who the vendor was. This is so for two reasons. First, the courts have made clear that a mayor's signing of a contract is not just a ministerial act. *Lumarose Equipment Corp. v. Springfield,* 15 Mass. App. Ct. 517, 520 (1983). It is intended to place a limit on the power of subordinate public officials in making contracts so as to unify control of the city's commercial transactions and guard against waste by departments of government. *Urban Transport, Inc. v. Mayor of Boston,* 373 Mass. 693 (1977). In other words, while one might not expect a mayor to read every word of what can often be a voluminous contract, one would expect a mayor to know what the contract was for, how much money was involved, and who the contractor was, before signing it. Second, unless a mayor takes the time to find out the nature of the contract and the identity of the vendor, he has no way of avoiding a conflict of interest situation such as occurred here. In short, it is incumbent on a mayor to establish a process by which any contracts or other particular matters in which he has a conflict of interest will be identified.

10. Mayor Manca also raises by way of defense the fact that on August 24, 1991, in a letter to the city clerk he disclosed the fact that Manca Brothers was in the fourth year of a five year contract to operate the city's landfill and that Manca Brothers was owned by his brother. Generally, an appropriate written disclosure to the city clerk does protect a municipal employee from a §23(b)(3) violation. A §23(b)(3) defense is not available here because to have been effective, the disclosure should have been made at the time Mayor Manca signed the Contract and it should have disclosed the particular circumstances of this contract, such as the nature and amount of the Contract and his brother's interest in the Contract. Indeed, even if the disclosure satisfied the §23(b)(3) requirements, it would not have avoided the conflict of interest problem where an immediate family member's financial interests were involved. In other words, in order for Mayor Manca to have made a proper disclosure, he would have had to have known that he was about to participate in a particular matter in which his brother had a financial interest. He would be barred from so participating under G.L. c. 268A, §19, cited above. Therefore, other than by abstaining, it would have been impossible for Mayor Manca to avoid a conflict of interest violation under these circumstances.

In view of the foregoing violation of G.L. c. 268A, §23(b)(3) by Mayor Manca, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings on the basis of the following terms and conditions agreed to by Mayor Manca:

(1) that Mayor Manca pay to the Commission the sum of five hundred dollars ($500) as a civil penalty for violating G.L. c. 268A, §23(b)(3);[7/] and

(2) that Mayor Manca waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: January 28, 1993

[1/] The exact value is indeterminable because the Contract was based on unit prices. In other words, Manca Brothers was to receive a certain amount each month for the rental of containers and then a certain amount on each occasion when it emptied and returned a container. The $6,000 is an estimate based on quotations requested and received by the Board of Health prior to the advertisement for bids, and actual costs.

[2/] Pursuant to standard city procedures, there were actually six separate copies of the Contract, each one duly executed by all of the foregoing people.

[3/] Section 23(b)(3) goes on to provide that "it shall be unreasonable to so conclude if such officer or employee has disclosed in writing to his appointing authority or, if no appointing authority exists, discloses in a manner which is public in nature, the facts which would otherwise lead to such a conclusion."

[4/] As the Commission stated *In re Keverian*, 1990 SEC 460, 462, regarding situations where public officials have private dealings with people they regulate in their official capacities, "And even if in fact no abuse occurs, the possibility that the public official may have taken unfair advantage of the situation can never be completely eliminated. Consequently, the appearance of impropriety remains." Here too, for the same reason, the appearance of impropriety unavoidably arises when a mayor signs a contract affecting an immediate family member, even if in fact no actual abuse occurs.

[5/] The Commission is not aware of any evidence indicating (a) there was any personal gain to the Mayor in this matter, or (b) there was any harm to the City as a result of the Mayor signing the contract. Of course, no such findings are necessary to establish a violation of G.L. c. 268A.

[6/] G.L. c. 268A, §19 prohibits a municipal employee from participating as such in a particular matter in which to his knowledge an immediate family member has a financial interest. As a general rule, a municipal official signing a contract involving an immediate family member would violate §19. See, e.g., *In re Studenski*, Comm. Dkt. No. 211 (June 23, 1983). Here, Mayor Manca has asserted under oath that he did not have the requisite knowledge that the Contract involved his brother's company, but he concedes that he had reason to know.

[7/] The Commission is authorized to impose a fine of up to $2,000 for each violation of G.L. c. 268A. Here, however, the Commission has agreed to a relatively small fine because (1) this contract appears to have followed all the appropriate bid, review and approval procedures; (2) it is a relatively small contract in dollar amount; and (3) although not a defense, it is mitigating that Mayor Manca had disclosed in writing to the city clerk that his brother was the owner of Manca Brothers.